Environment and Land Tribunals Ontario

Annual Report 2011-2012

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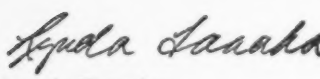
Environment and Land Tribunals Ontario
www.elto.gov.on.ca

To the Honourable John Gerretsen, Attorney General

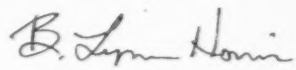
Minister:

We have the pleasure of submitting, for the approval of the Legislature, the Environment and Land Tribunals Ontario 2011-2012 Annual Report.

Respectfully submitted,



Lynda Tanaka
Executive Chair
Environment and Land Tribunals Ontario



Lynn Norris
Executive Lead
Environment and Land Tribunals Ontario

2012

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PART 1: Environment and Land Tribunals Ontario (ELTO)

Chair's Message – 2012

On behalf of all Members and staff, I am pleased to present the 2011-2012 Environment and Land Tribunals Ontario Annual Report. This report covers the fiscal year ending March 31, 2012. Environment and Land Tribunals Ontario (ELTO) brings together five Ontario tribunals and boards which adjudicate matters related to land use planning, environmental and heritage protection, property assessment, land valuation and other matters. ELTO and all who work within it are committed to providing access to justice and to high quality, independent, timely, fair and principled resolutions of the matters brought before them.

In March of 2012, ELTO received the Minister's approval of our public accountability documents, as required by the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (ATAGAA)*. The public accountability documents include: Mandate and Mission Statement, Consultation Policy, Service Standard Policy, Ethics Plan, and Member Accountability Framework, which includes position descriptions and a Code of Conduct. Copies of these documents will be posted in early 2012 on the ELTO website: www.elto.gov.on.ca. The Business Plan and Memorandum of Understanding have been approved and will be posted early 2012.

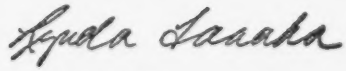
As Executive Chair of ELTO, I plan to build on the proud history and strengths of the tribunals to enhance their individual and collective expertise. I would like to take this opportunity to thank the members of the public, the ELTO Adjudicators, the representatives of stakeholders and staff for their support and willingness to talk to me about ELTO. We are committed to building our competencies and processes to fulfill the mandates entrusted to us in accordance with our mission statement.

ELTO will provide service in a fair, transparent, timely, accessible and professional manner. Staff and Members will act with integrity and work together to foster excellence at the tribunals. Together we will provide excellent service to the public.

I would also like to acknowledge the important contributions of those Members and staff who have left ELTO. We are grateful for their work on behalf of the people of Ontario.

I look forward to working with Members, staff, stakeholders and the broader community throughout the 2012-2013 fiscal year and beyond to refine and enhance the services provided by ELTO.

Sincerely,



Lynda Tanaka
Executive Chair - Environment and Land Tribunals Ontario

About Environment and Land Tribunals Ontario (ELTO)

Environment and Land Tribunals Ontario (ELTO) brings together five Ontario tribunals and boards which adjudicate and provide dispute resolution services on matters related to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

ELTO was created under the authority of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (ATAGAA)*. This act permits the government to designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

The tribunals that comprise ELTO are:

The **Assessment Review Board (ARB)**, which hears property assessment appeals to ensure that properties are assessed and classified in accordance with the provisions of the *Assessment Act*. The ARB also operates under a variety of other legislation and hears appeals on property tax matters.

The **Board of Negotiation (BON)**, which conducts voluntary mediation under the *Expropriations Act* in the event of a dispute over the value of land expropriated by a public authority. If no settlement is reached, the matter may be appealed to the Ontario Municipal Board.

The **Conservation Review Board (CRB)**, which conducts proceedings where there are disputes concerning properties that may demonstrate cultural heritage value or interest, or disputes surrounding archaeological licensing. After determining a matter under the *Ontario Heritage Act*, the CRB then makes recommendations to the final decision-making authority in the particular case, either a local municipal council or the Minister of Culture.

The **Environmental Review Tribunal (ERT)**, which hears applications and appeals under numerous environmental and planning statutes including the Environmental Bill of Rights, the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Safe Drinking Water Act*. The Tribunal also functions as the Niagara Escarpment Hearing Office to hear development permit appeals and Niagara Escarpment Plan amendment applications for the protected World Biosphere Reserve, and serves as the Office of Consolidated Hearings to hear applications for joint hearings where separate hearings before more than one tribunal would otherwise be required.

The **Ontario Municipal Board (OMB)**, which hears applications and appeals in relation to a range of municipal planning, financial and land matters including official plans, zoning by-laws, subdivision plans, consents and minor variances, land compensation, development charges, electoral ward boundaries, municipal finance, aggregate resources and other issues assigned to the OMB by numerous Ontario statutes such as the *Planning Act*, *Municipal Act*, *Development Charges Act* and *Expropriations Act*.

Governance and Accountability

ATAGAA and related regulations have further strengthened and made transparent the accountability framework for adjudicative tribunals through provisions with respect to:

- Requirements for public accountability documents, including mandate and mission statements, consultation policies, service standard policies, ethics plans and member accountability frameworks (such as job descriptions, necessary skills and qualifications, and codes of conduct)

- Requirements for governance accountability documents, including memoranda of understanding, business plans, and annual reports

- Requirements for appointments and the need for the selection process to be competitive and merit-based

- The designation of clusters of two or more adjudicative tribunals to improve the efficiency and efficacy of tribunals.

During the 2012-2013 fiscal year, ELTO will post on its website the required public and governance accountability documents with the exception of the Annual Report that will be posted upon final approval.

In January 2012, ELTO commenced a competition for appointment of new members to the OMB with possible cross-appointment to other tribunals in ELTO through a competitive merit-based process.

ELTO continues to build on core competencies and processes to fulfill its mandate in accordance with the mission statement and core values. To build on the transparency and fairness of the constituent tribunals, ELTO has undertaken continuous training in decision-writing techniques in accordance with best practices and promotes strategies to increase the efficiency of pre-hearing conferences and hearings.

Integrity, professionalism and independence of members and staff are important values to the success of ELTO. These values are reflected in ELTO's Code of Conduct that addresses the principles of good conduct and collegial responsibility for all full and part-time members.

We are building a more transparent organization. In July 2011, we began publishing information on requests for review of OMB decisions under section 43 of the *Ontario Municipal Board Act* where parties disagree with the outcome of a hearing. This information is being updated on the website monthly. We have also begun publishing statistics on the ARB, CRB, ERT and OMB's workload. These statistics are updated on the ELTO website on a quarterly basis.

Performance Results

ELTO strives to ensure timeliness in the scheduling of proceedings and delivery of decisions. This commitment is reflected in ELTO's performance target to release decisions and reports within 60 days of the end of a hearing event in 85 per cent of all cases. Over the past three years, ELTO has met or exceeded this performance target and is continuously looking at ways to further improve these results. We remain focused on improving the quality of our decisions without sacrificing timeliness. Performance results for the constituent tribunals can be found in the Overview of the Tribunals section of this report.

Stakeholder Consultations

Over the past year, ELTO Executives and Members have met with many stakeholder groups to obtain feedback on tribunal processes and identify suggestions on how to improve services.

This feedback included seeking input on amendments to the Assessment Review Board's Rules of Practice & Procedure on orders for costs. This rule, which will come into effect on July 2, 2012, applies to all hearing events and conduct on or after that date. ELTO is also moving forward with consultations concerning improvements to in-person hearings, the use of alternate hearing formats (such as teleconference, videoconference and written hearings) and alternative dispute resolution processes to narrow issues for all of the constituent tribunals. ELTO tribunals have already generated experience in utilizing some of these techniques to achieve a more cost-efficient and timely adjudication process.

On an ongoing basis, ELTO will continue to consult with the public in accordance with the consultation policy about changes to the rules, practice directions or policies of the constituent tribunals, including consultation with those whose interests, in the opinion of the Executive Chair, would be affected by those changes. These consultations will include inviting feedback on the impact of changes that have been implemented to determine if they are meeting their intended goals or are having any unintended consequences.

Mandate, Mission and Core Values

Mandate

ELTO is a group of five tribunals that resolve appeals, applications and other disputes, under some 100 statutes, in relation to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

Mission

ELTO and its constituent tribunals will strive for excellence and demonstrate the highest standards of public service in:

- Delivering modern, fair, accessible, effective and timely dispute resolution services
- Demonstrating consistency in procedures and outcomes while remaining responsive to differing cases and party needs, and to an evolving development of the law
- Responding to the needs of diverse stakeholder communities
- Resolving disputes, within the applicable legislative framework, to support strong, healthy communities and achieve outcomes that are in the public interest.

Core Values

Core values are the guiding principles of ELTO and the foundation on which its constituent tribunals fulfill their mandates.

Accessibility

- Publications, communications and facilities, including hearing and mediation rooms, will provide for full and equitable access.
- Diversity will be fully respected and reflected in all that ELTO does.
- Processes will be designed in a way that facilitates informed participation. Proceedings will be conducted in a manner which is welcoming and respectful.
- Practices and procedures will provide for a meaningful, effective opportunity to be heard on the relevant issues to be resolved in a particular case.

Fairness

- Proceedings will be conducted impartially. Decisions will be principled and based on the facts, the applicable law and policy, and on the merits of the case.

Transparency

- Tribunal procedures, rules, policies and decisions will be clear and readily available to the public. Reasons for decisions will be concise and will explain how the decision was reached.

Timeliness

- Proceedings will be conducted in a timely and expeditious manner and will be proportional to the issues that must be determined to resolve the dispute.
- Decisions will be issued as soon as possible after a proceeding.

Integrity, Professionalism and Independence

- Members and staff will act with honesty, integrity and professionalism, exhibiting the highest standards of public service.
- Members and staff will work together to build public confidence in ELTO, its constituent tribunals and the administration of justice.
- ELTO and its constituent tribunals must be, and be seen to be, neutral, unbiased and independent from improper influence.

Environment and Land Tribunals Ontario Appointees	Original Appointment
Executive Chair	
Tanaka, Lynda C.E.	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010

ARB Appointees	Original Appointment
Executive Chair	
Tanaka, Lynda C.E	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010
Associate Chair	
Stephenson, Richard F.	April 7, 1993
Vice-Chairs	
Bourassa, Marcelle	April 11, 2006
Butterworth, Robert	November 19, 1997
Mather, Susan	November 19, 1997
Members	
Cowan, Bernard A.	December 19, 1997
Walker, Janet Lea	September 4, 2007
Whitehurst, Donald	May 18, 2005
Wyger, Joseph M.	May 27, 1998
Part-Time Members	
Andrews, Peter	May 18, 2005
*Bachly, David	November 26, 1970
*Belanger, Mignonne	January 11, 1984
Birnie, Ian	May 6, 1999
*Brownlie, John D.	May 27, 1998
Castel, André	November 19, 1997
Corcelli, Richard J.	January 15, 2007
Driesel, Sandra	March 16, 2000
Duan, Yucheng Josie	September 29, 2010
Fenus, Andrew	May 30, 2007
Griffith, Jennifer	September 17, 2004
*Justin, Edith	November 17, 1970
Kowarsky, Barbara	May 18, 2005
Laflamme, Jacques	August 25, 2004
LaRegina, Anthony	January 15, 2007
Laws, Joanne	February 10, 2006
Levasseur, Romeo	May 18, 2005
Limoges, Rick	January 15, 2007
Mackay, Ann	August 25, 2004
Marques, Ana Cristina	May 18, 2005
Minnie, Garry	March 1, 2006
Morin, Gilles	September 30, 2004
Nalezinski, Les	March 1, 2006
Oliveira, Evangelista (Ivan)	May 17, 1999
Plumstead, Nicoll	May 18, 2005
Rade, Bernice M.	August 25, 2004
Roberts, Catherine E.	September 29, 2010

Romas, George	August 25, 2004
Saponara, Fausto	May 18, 2005
Sharma, Marilyn	January 15, 2007
Shirtliff-Hinds, Carol	September 29, 2010
Skanes, Tyrone	September 29, 2010
Sloan, Charlotte	September 29, 2010
*Smith, Barry A.	November 26, 1970
Stabile, Vincent	September 29, 2010
*Stillman, Paul M.	March 26, 1975
Sutton, William (Bill)	September 17, 2004
Tchegus, Robert	February 10, 2006
Tersigni, Joe	May 30, 2001
Walker, Tanya	September 29, 2010
Weagant, Dan	September 29, 2010

BON Appointees	**Original Appointment**
Executive Chair	
Tanaka, Lynda C.E.	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010
Part-Time Members	
Egan, Terry	June 17, 2009
Rusin, Peter	May 4, 2011
Simmons, Lawrence John	March 23, 2005
Steinberg, Robert	May 4, 2011
Taylor, Ian	June 20, 2007
Yuen, Jane	December 19, 2008

CRB Appointees	**Original Appointment**
Executive Chair	
Tanaka, Lynda C.E.	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010
Part-Time Associate Chair	
Zakarow, Peter. A.P.	March 30, 2002
Part-Time Vice-Chair	
Murdoch, Su	February 16, 2005
Part-Time Members	
*Harris, Julie	April 16, 2009
Haslam, Karen	December 1, 2004
Henderson, Stuart	June 28, 2006
Kidd, Stuart W.	February 3, 2006

ERT Appointees	**Original Appointment**
Executive Chair	
Tanaka, Lynda C.E.	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010

Associate Chair	
DeMarco, Jerry V.	June 27, 2005
Vice-Chairs	
Gibbs, Heather	September 20, 2006
Muldoon, Paul	April 4, 2006
VanderBent, Dirk	September 18, 2006
Wright, Robert V.	August 27, 2007
Member	
**Jackson, Helen	May 24, 2011
Part-time Members	
Carter-Whitney, Maureen	May 4, 2011
Levy, Alan D.	May 9, 2007
McLeod-Kilmurray, Heather	May 4, 2011
Pardy, Bruce	June 22, 2005
Valiante, Marcia	May 9, 2007
OMB Appointees	**Original Appointment**
Executive Chair	
Tanaka, Lynda C.E.	May 16, 2011
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010
Associate Chair	
Lee, Wilson S.	July 1, 1988
Vice-Chairs	
Campbell, Susan B.	April 28, 2004
*Granger, Donald R.	November 3, 1997
Hussey, Karlene	April 20, 2005
Jackson, Norman C.	October 6, 1997
McKenzie, James	July 3, 2007
Schiller, Susan	September 6, 2005
Seaborn, Jan de Pencier	May 31, 2000
Stefanko, Steven	April 20, 2005
Zuidema, Jyoti	August 20, 2007
Members	
Atcheson, J. Peter	July 5, 2004
Chee-Hing, Jason	September 1, 2004
Christou, Aristotle	April 16, 2008
Conti, Chris	July 3, 2007
Denhez, Marc	May 31, 2004
Goldkind, Harold	February 7, 2007
Hefferon, Colin	September 20, 2006
**Jackson, Helen	May 24, 2011
Rossi, Reid	May 31, 2004
Sills, Mary-Anne	July 3, 2007
Sniezek, Joseph E.	June 23, 2004
Sutherland, Sylvia	March 21, 2007
Wong, Joe. G.	April 16, 2008

*Indicates Appointees who were no longer with ELTO as of March 31, 2012.
**OMB and ERT Cross Appointed Member

Financial Summary by Tribunal

Assessment Review Board

ARB Expenditures 2009-2010 to 2011-2012

ACCOUNT ITEMS	2009-2010 ($)	2010-2011 ($)	2011-2012 ($)
Salary and Wages	4,544,199	5,069,334	5,331,350
Employee Benefits	610,359	592,736	599,859
Transportation and Communications	496,175	562,773	522,734
Services	2,325,650	2,489,442	2,061,748
Supplies & Equipment	182,710	120,239	133,664
Transfer Payment	NIL	NIL	NIL
TOTAL	**8,159,093**	**8,834,524**	**8,649,355**

Fees Collected

Under the authority of the *Assessment Review Board Act*, appeals must be accompanied by the required filing fee. All filing fees, which vary depending on property type, are remitted to the Ministry of Finance.

ARB Fees Collected 2009-2010 to 2011-2012

FISCAL YEAR	REVENUE COLLECTED ($)
2009-2010	**3,276,776**
2010-2011	**704,375**
2011-2012	**531,318**

Note: 2009 was the first of a four year assessment cycle, in 2010-11 revenues naturally declined with fewer appeals filed.

Conservation Review Board

CRB Expenditures 2009-2010 to 2011-2012

ACCOUNT ITEMS	2009-2010 ($)	2010-2011 ($)	2011-2012 ($)
Salary and Wages	55,800	55,294	NIL
Employee Benefits	5,430	7,039	NIL
Transportation and Communications	6,605	9,314	4,148
Services	124,293	103,987	88,885
Supplies & Equipment	2,515	NIL	NIL
TOTAL	**194,643**	**175,634**	**93,033**

Environmental Review Tribunal

ERT Expenditures 2009-2010 to 2011-2012

ACCOUNT ITEMS	2009-2010 ($)	2010-2011 ($)	2011-2012 ($)
Salary and Wages	1,056,615	1,018,981	1,039,336
***Employee Benefits**	*	134,306	131,807
Transportation and Communications	31,657	37,186	17,503
Services	441,101	420,721	133,767
Supplies & Equipment	30,310	26,732	33,737
TOTAL	**1,559,683**	**1,637,926**	**1,356,150**

** Prior to 2010-11, Employee Benefits were managed centrally by the Ministry of the Environment.*

Ontario Municipal Board and Board of Negotiation

Allocation
A single budget for the OMB and the BON is provided within the *Estimates of the Ministry of the Attorney General* on a fiscal-year basis.

OMB and BON Expenditures 2009-2010 to 2011-2012

ACCOUNT ITEM	2009-2010 ($)	2010-2011 ($)	2011-2012 ($)
Salary and Wages	5,658,557	5,520,277	5,810,695
Employee Benefits	754,583	750,534	758,858
Transportation & Communications	579,860	507,589	473,431
Services	217,482	978,071	570,379
Supplies and Equipment	54,991	48,652	62,301
Transfer Payments	NIL	NIL	NIL
TOTAL	**7,265,473**	**7,805,123**	**7,675,664**

Fees Collected
Under the authority of section 100 of the *Ontario Municipal Board Act*, filing fees have been set for each application or appeal filed with the OMB. The standard fee is $125. All fees collected by the OMB are remitted to the Ministry of Finance.

OMB Revenue 2009-2010 to 2011-2012

FISCAL YEAR	FEES COLLECTED ($)
2009-2010	**209,921**
2010-2011	**330,225**
2011-2012	**239,483**

**Source: public accounts*

Part 2: Overview of the Tribunals

SECTION 1: ASSESSMENT REVIEW BOARD (ARB)

About the ARB

The Assessment Review Board (ARB) is an independent adjudicative tribunal established under the *Assessment Act*, with a mandate to hear appeals about property assessment and classification. The ARB hears these appeals and renders a decision based on the applicable law and the evidence presented at the hearing.

The ARB, which operates under a variety of legislation, also deals with appeals on property tax under the *Municipal Act*, the *City of Toronto Act* and the *Provincial Land Tax Act*.

The Property Assessment System

The provincial government, through the Ministry of Finance, sets the laws regarding property assessment. Municipalities are responsible for setting tax rates and collecting property taxes. The Municipal Property Assessment Corporation (MPAC) assesses and classifies all properties in Ontario. If there is a dispute between a property owner and MPAC, the property owner can file an appeal with the ARB.

Purpose of the ARB

The ARB receives appeals on property assessments and property taxes. Hearings are scheduled across the province, usually in the municipality where the property is located. At the hearing, all parties have the opportunity to present evidence and make arguments. The ARB hears these appeals and makes decisions based on the applicable law and the evidence presented at the hearing.

History and Jurisdiction

Property assessments have been conducted in what is now Ontario since 1793. In 1970, the province assumed the role of assessing property from municipalities and replaced the Courts of Revision with the Assessment Review Court (ARC). ARC was renamed the Assessment Review Board in 1983.

With the enactment of the *Fair Municipal Finance Act*, the ARB became the province's sole adjudicative tribunal for property assessment appeals. The legislation reduced duplication and ensured that the ARB was the final tribunal of appeal for such appeals. Prior to 1998, ARB decisions could be appealed to the Ontario Municipal Board (OMB).

In 1998, an amendment to the *Assessment Review Board Act* gave the ARB the capacity to dismiss frivolous appeals.

Decisions by the ARB are final and binding, subject only to appeal to Divisional Court on questions of law when the Court grants leave to appeal. The ARB also exercises the power to review its decisions.

Beginning with the 2009 tax year, changes to the *Assessment Act* require owners of residential, farm and conservation lands, and managed forests to file a request for reconsideration with MPAC, and/or the Program Administrator (for farm, managed forest or conservation land), before they may file an appeal with the ARB.

The ARB's jurisdiction and its authority are defined by the *Assessment Review Board Act*, the *Assessment Act*, the *Municipal Act*, the *City of Toronto Act*, the *Provincial Land Tax Act*, the *Education Act* and the *Statutory Powers Procedure Act*.

Changes to Legislation and Rules

(Note: the following changes in legislation and regulations are a selected list of key provisions affecting the ARB.)

1. *Assessment Act*

On May 12, 2011, The Better Tomorrow for Ontario Act (Budget Measures), 2011 received Royal Assent. Subsection 3(1) of the *Assessment Act* was amended by adding a paragraph regarding non-profit hospices providing end of life care. Section 3 of the *Assessment Act* was amended by adding a subsection concerning the exemption for land continuing after machinery or equipment used to produce electricity from a renewable energy source is installed. Both amendments are retroactive to January 1, 2011.

2. Regulations under the *Assessment Act*

Ontario Regulation 403/11 Non-Profit Hospices
On August 26, 2011, Ontario Regulation 403/11 amended Regulation 282/98 with the addition of Part III.1 creating an exemption from taxation under prescribed conditions for non-profit hospices providing end of life care. This regulation was deemed to have come into force on January 1, 2011.

Ontario Regulation 1/12 Assessment of Renewable Energy Installations
On January 4, 2012, Ontario Regulation 1/12 amended Regulation 282/98 with the addition of Part VIII.1 to introduce new rules governing the property tax treatment of renewable energy installations. The amendments took effect as of January 1, 2011 and apply to solar energy, wind energy and anaerobic digestion of organic matter facilities that generate electricity.

There were no changes to the Rules of Practice and Procedure during this fiscal year.

Caseload

At the beginning of the 2011-2012 fiscal year, the ARB had a total of 90,000 appeals on file. During the 2011-2012 fiscal year, the ARB received approximately 43,000 appeals. By the end of the fiscal year, over 43,000 appeals were resolved. The bulk of the outstanding caseload at the end of the fiscal year consisted mostly of complex, non-residential properties from previous years.

In complex cases, more time may be required by the parties to gather evidence and prepare for hearings.

ARB Caseload 2009-2010 to 2011-2012

YEAR		2009-2010	2010-2011	2011-2012
Opening Caseload Balance		79,000	89,000	90,000
Caseload Received*	+	54,000	40,000	43,000
Total Caseload for year	=	133,000	129,000	133,000
Resolved Caseload	-	44,000	39,000	43,000
Balance at the End of the Fiscal Period	=	89,000	90,000	90,000

Note: *The deadline for assessment appeals to the ARB was March 31, 2012 or 90 days from the date of MPAC's request for reconsideration decision.*

** **Caseload Received** includes all types of appeals dealt with by the ARB, including annual assessment appeals, supplementary and omitted assessment appeals, Municipal Act appeals and City of Toronto Act appeals.*

In February 2012, the Board introduced a revised strategy for the expeditious resolution of its outstanding caseload, particularly for non-residential cases, prior to the start of the next four-year assessment cycle commencing in 2013. The Board will continue to work collaboratively with the assessment community to address the pending caseload through case management strategies, practice directions and enhancements to the ARB rules.

Performance Results

The ARB hears all assessment appeals in Ontario. Generally, residential appeals can be streamed directly to a full hearing and are consequently resolved faster than many non-residential appeals, which may require multiple hearing events.

The ARB works to resolve residential appeals within one year of filing. In the 2011-2012 fiscal year, 97 per cent of self-represented residential appeals were resolved within 365 days of filing.

The ARB strives to issue its decisions in a timely manner. In the 2011-2012 fiscal year, 91 per cent of all ARB decisions were issued within 60 days of the hearing.

Process of the ARB

Pre-hearings

Many appeals concerning complex, non-residential properties require extensive hearing time and may be presided over by a panel of Members. These appeals are screened based on established criteria such as property classification, size and assessed value, and may be directed into pre-hearings.

During the pre-hearing process, the ARB works with the parties to establish a schedule for proceeding and may issue procedural orders to direct exchanges of information and pre-filings. Pre-hearings have the potential to expedite the hearing process and allow parties to reach a settlement before a hearing begins.

Hearings

Hearings give an appellant the chance to explain why he or she thinks the property assessment from MPAC is wrong. During the hearing, the parties present evidence and question each other on that evidence. At the end of the hearing, the Member who is overseeing the hearing makes a decision or may reserve the decision for a later date.

Teleconferences

It can sometimes be difficult and time consuming to coordinate a hearing when parties need to travel across the province. For these cases, the ARB conducts telephone conferencing, or "electronic hearings." In 2011-2012, the ARB conducted more than 1,300 teleconferences. Teleconferencing is a practical way to provide status updates and determine next steps toward issuing procedural or consent orders, resolving contentious matters and, in some instances, settling appeals. This service saves time and money by reducing travel for all parties involved in ARB hearings.

Decisions

After the Member has received all submissions from the parties, the Member considers the submissions. The Member may give an oral decision at that time or may reserve the decision for a later date. If the decision is reserved, a decision with written reasons will be mailed to the parties.

SECTION 2: BOARD OF NEGOTIATION (BON)

About the BON

The Board of Negotiation (BON) provides mediation services to parties involved in disputes over the value of expropriated land – the landowner on the one hand, and the expropriating authority on the other (typically the Crown or a municipality). The BON becomes involved only after alternative avenues for settlement have not succeeded. Meetings with the parties are held throughout Ontario at no cost to either party. The BON views the property, reviews all written documentation and considers the submissions from the parties.

Purpose of the BON

Through mediation, the BON tries to help parties reach a resolution. While it has no power to impose a settlement, the BON will, where sufficient information has been submitted, provide a recommendation to the parties on what would be fair compensation.

Using its expert mediators, the BON has been able to achieve a high rate of success with the cases brought before it.

History and Jurisdiction

The BON was formed under the authority of the *Expropriations Procedures Act 1962/63*. The Act, which came into force on January 1, 1964, represented one of the recommendations of the report by the Select Committee on Land Expropriation. As a result of subsequent studies on compensation and procedures, including reports for the Ontario Law Reform Commission, the *Expropriations Act* came into force on January 1, 1970.

Caseload

The number of files received and meetings held for the last three years is summarized in the following table.

BON Files Received, Meetings Held and Open Files

	2009-2010	2010-2011	2011-2012
Files Received	**26**	**34**	**74**
Meetings Held	**26**	**28**	**38**
Open Files (as of March 31)	**18**	**17**	**45**

Process of the BON

The BON holds negotiation meetings at the request of a party. There is no cost to the party to apply or have a matter proceed before the BON. When a request is received, an acknowledgement letter is sent to the requesting party asking for their availability. When a date is determined, the BON sends a notice to the parties informing them of the date of the meeting.

BON mediation is confidential. If a settlement cannot be reached at the BON, the parties may bring the matter to the Ontario Municipal Board (OMB). However, because of the confidentiality of the mediation process, the BON and OMB take strict measures to ensure that any information received by the BON is kept from the OMB. OMB Members and staff do not have access to any information or discussions that were part of the BON process.

SECTION 3: CONSERVATION REVIEW BOARD (CRB)

About the CRB

The Conservation Review Board (CRB) is an adjudicative tribunal that hears disputes on matters relating to the protection of properties considered to hold cultural heritage value or interest to a municipality or to the Minister of Culture, as defined by the *Ontario Heritage Act*.

Purpose of the CRB

The CRB receives referrals of objections or applications under the act concerning either properties of potential heritage value or interest, or archaeological licensing. Cases are received from either municipalities or the Minister of Culture. Through a proceeding, the CRB attempts to settle a dispute and/or hears evidence and arguments by parties. The ultimate result, where a case is not settled, is the development of a Recommendation by the CRB, which is submitted for the consideration of the final decision making body for that case, either a local municipal council or the Minister of Culture. The CRB is an independent adjudicative agency subject to the rules of natural justice and many of the requirements of the *Statutory Powers Procedure Act*.

History and Jurisdiction

The CRB was established in 1975 under Part III of the *Ontario Heritage Act*.

The CRB conducts proceedings on matters that are referred, which includes both pre-hearing conferences to explore the potential of settlement as well as formal hearings to hear evidence and arguments to best enable the CRB to make recommendations to the final decision making power for that particular case. The CRB has responsibilities under both Part IV and Part VI of the act.

In 2005, changes to the act gave the CRB additional responsibilities. The CRB now hears objections concerning properties deemed provincially significant by the Minister of Culture under Part IV of the act. As well, the act now permits the cross-appointment of CRB Members to OMB panels hearing certain appeals under the act.

In 2009, an Order in Council transferred responsibility for the CRB from the Ministry of Culture to the Ministry of the Attorney General (MAG).

The CRB's jurisdiction and its authority are defined by the *Ontario Heritage Act* and the *Statutory Powers Procedure Act*.

Caseload

At the beginning of the fiscal year, the CRB had nine open files. During the 2011-2012 fiscal year, eight referrals were received from municipalities, all of which were related to objections under section 29 of the act.

The CRB was successful in settling the majority of matters referred during the past fiscal year through its use of pre-hearing conferences.

Only one matter proceeded to a full hearing this fiscal year. A report was made to a municipal council.

CRB Caseload 2009-2010 to 2011-2012

	Fiscal Year		
	2009-2010	2010-2011	2011-2012
Cases Received	16	8	8
Pre-Hearing Conferences	38	27	10
Hearings Held			1
Reports Issued	3	3	1
Withdrawals	19	17	5
Open Cases (as of March 31)	21	9	11

Process of the CRB

Process Overview

Once an objection is referred to the CRB, a formal process begins that structures how the objection will be heard, and how a party and members of the public can participate. Each referral is assigned a CRB "case file number" and the file is assessed for completeness of information, any jurisdictional issues are resolved and a pre-hearing conference is scheduled.

Pre-Hearing Conferences

The pre-hearing conference (PHC) provides an opportunity for all parties (objector(s), municipality or Minister of Culture, the property owner, and other recognized parties, as applicable) to discuss the issues with each other and with the CRB, without prejudice. The two fundamental interests in conducting the PHC are to seek a mediated settlement of the dispute and to prepare all parties for the formal hearing process where settlement is not successful.

The PHC is not intended to be the forum to discuss the arguments of a case, and thus no evidence is presented and no final decisions are made. Some evidence may be permitted by the CRB to further support the positions of each party and to seek a settlement.

If a full settlement is reached at the PHC, each objector and the property owner (if applicable) must submit a letter of Withdrawal of Objection to the CRB, or the municipality must submit a letter of Withdrawal of the Notice of Intention to Designate and the case is closed. If a settlement is not reached, the PHC proceeds to the phase of preparing all parties for the formal hearing.

Hearings

While CRB hearings are less formal than many types of legal proceedings, they are still governed by rules of procedure and conducted in a quasi-judicial, structured manner. Most parties are represented by legal counsel. Those without legal counsel must become familiar with the CRB's Rules of Practice and Procedure, the *Ontario Heritage Act* and the *Statutory Powers Procedure Act.*

Hearings are fully open to the public. It is the practice of the CRB to hold the hearing within the municipality of the subject property and to conduct a site visit of the property.

Recommendations

After the hearing, the CRB issues a report to the municipal council, or the Minister of Culture, whichever has jurisdiction, making recommendations based on the evidence presented and arguments made at the hearing. Typically, the CRB attempts to release the report within 30 days, but a later release does not invalidate the hearing process. The CRB's case file is then closed. The municipal council or the Minister makes the final decision on the matter, taking the CRB's report into account.

SECTION 4: ENVIRONMENTAL REVIEW TRIBUNAL (ERT)

About the ERT

The ERT is an administrative tribunal which operates under rules of procedural fairness, the rules of natural justice, and the requirements of its governing legislation and the *Statutory Powers Procedure Act*. The ERT Members, who are Order-in-Council appointees, conduct fair, efficient and impartial hearings and make decisions, issue reports or make recommendations, with written reasons that are based on the applicable law, the evidence presented, and statutory duties to protect the environment.

Purpose of the ERT

The ERT resolves applications and appeals under the following statutes: *Clean Water Act*, *Consolidated Hearings Act, Environmental Assessment Act, Environmental Bill of Rights, Environmental Protection Act, Niagara Escarpment Planning and Development Act (NEPDA), Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Safe Drinking Water Act* and the *Toxics Reduction Act*. The ERT also hears matters under the *Oak Ridges Moraine Conservation Act* and the *Greenbelt Act*.

Under the *Niagara Escarpment Planning and Development Act*, Members of the ERT are appointed by the Minister of Natural Resources as Hearing Officers to conduct hearings. The Hearing Officers issue reports or make recommendations concerning appeals of decisions of the Niagara Escarpment Commission regarding development permit applications. Members are also appointed to conduct public hearings for the purpose of making recommendations regarding proposed Niagara Escarpment Plan (NEP) amendments. Every 10 years, Members conduct hearings to review the NEP.

Pursuant to a designation as the Office of Consolidated Hearings, the ERT administers hearings as requested under the *Consolidated Hearings Act*. Under the authority of the *Consolidated Hearings Act*, a Joint Board is established in order to combine into one hearing a multiplicity of hearings before different tribunals under various acts on matters relating to the same undertaking. A Joint Board usually consists of Members of the ERT and the OMB, and is empowered to hold a hearing to consider all of the matters under all of the prescribed acts that govern the undertaking and for which hearings are required.

History

The ERT was established under the *Environmental Review Tribunal Act* with the merging of the Environmental Assessment Board and the Environmental Appeal Board. All the roles of those two Boards were taken on by the ERT at that time.

When the *Ontario Water Resources Act* passed in 1970, the Environmental Hearing Board (EHB) was created. The EHB heard some of the matters of the Ontario Water Resources Commission, established in 1956. The EHB then became the Environmental Assessment Board in 1975. It held hearings about waste or sewage disposal sites as well as environmental assessments. It also had a role in appeals from decisions of the Niagara Escarpment Commission and in Joint Board hearings under the *Consolidated Hearings Act*. These areas were assumed by the ERT.

The Environmental Appeal Board, established under the *Environmental Protection Act*, held hearings on appeals about decisions made by Directors of the Ministry of the Environment. In 1978, this Board also took on the hearings role of the Pesticides Appeal Board, which was established in 1973.

Changes to Legislation and Rules

There have been several updates to the ERT's legislation and regulations in the April 1, 2011 to March 31, 2012 period. Changes include amendments to the *Environmental Protection Act*, the *Environmental Assessment Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act*, and the *Toxics Reduction Act*.

Most of the updates were minor changes to regulations, and reflected the implementation of the *Open for Business Act*, which received Royal Assent on October 25, 2010. The *Open for Business Act* aimed to simplify the environmental approval process, and replaced the old Certificate of Approval system with Environmental Compliance Approvals as part of a dual track system. The legislative changes mainly served to amend terminology, replacing "Certificate of Approval" references with "Environmental Compliance Approval," and also include guidance on ECA applications, approvals and registration.

There have not been any changes to the ERT's Rules of Practice and Practice Directions, as changes related to the new Environmental Compliance Approval system were anticipated and incorporated in the 2010 updates.

Caseload

At the beginning of the fiscal year, the ERT carried forward 55 cases from the 2010-2011 fiscal year. During the 2011-2012 fiscal year, the ERT received 252 appeals/applications and requests for hearing which represents about a 40 per cent increase from past years. As some matters may be heard together, the overall caseload received for the year was 85, which is generally consistent with past years. The table below provides a breakdown by legislation type. By the end of the fiscal year, 77 cases were resolved, leaving 63 cases to be carried forward into the next year.

Appeals/Applications and Requests for Hearings received 2009-2010 to 2011-2012

Case Type	2009-2010	2010-2011	2011-2012
Environmental Bill of Rights	27	14 (8%)	12 (5%)
Environmental Protection Act *	55	53 (28%)	84 (33%)
Nutrient Management Act	0	1 (1%)	0 (0%)
Ontario Water Resources Act	10	7 (4%)	8 (3%)
Safe Drinking Water Act	2	1 (1%)	1 (1%)
NEPDA – Development Permits	93	103 (57%)	146 (58%)
NEPDA – Plan Amendments	1	0 (0%)	1 (1%)
Consolidated Hearings Act	0	1 (1%)	0 (0%)
Total	**188**	**180**	**252 (85 Cases)**

**Includes four appeals of a Renewable Energy Approval by a Third Party*

Consolidated Hearings

The ERT has administrative responsibility for the *Consolidated Hearings Act* (CHA). This administrative responsibility is conducted under the designation of the Office of Consolidated Hearings. During 2011-2012, the Office of Consolidated Hearings received no new requests for a consolidated hearing. Four Consolidated Hearing matters were carried forward from the previous fiscal year.

Hearing Activity

The ERT held a total of 433 hearing events in the 2011-2012 fiscal year. Main hearings and motions accounted for 184 days during the year as compared to 237 during the previous year. Pre-hearing conferences are offered in appeals of development permit applications under the *Niagara Escarpment Planning and Development Act* and provide an opportunity to clarify, refine or settle the issues. For this fiscal year, 54 pre-hearing conferences were held.

Mediation is offered in all appeal and application hearings (except in matters under the *Niagara Escarpment Planning and Development Act, Oak Ridges Moraine Conservation Act* and the *Greenbelt Act*) and is conducted after a preliminary hearing, generally 30 days prior to the commencement of the main hearing. For the 2011-2012 fiscal year, there were 29 mediations held.

The ERT may also schedule a preliminary hearing in order to facilitate preparation for the main hearing. The Member issues a written order after the preliminary hearing regarding what was decided at the preliminary hearing. In the 2011-2012 fiscal year, 44 preliminary hearing event days were held.

Where practical, the ERT also conducts some other hearing events by teleconference to facilitate case status updates or determine next steps to save time for those involved. In 2011-2012, the ERT held 122 teleconference events.

The ERT also conducts written hearings for leave to appeal applications under the *Environmental Bill of Rights.*

Performance Results

The ERT issues decisions in compliance with all legislated deadlines. For those decisions without legislated requirements, excluding decisions under the *Consolidated Hearings Act*, the ERT endeavours to render 85 per cent of these decisions within 60 days following the conclusion of the hearing or filing of final written submissions (if ordered by the hearing panel). For the 2011-2012 fiscal year, 73 per cent of these decisions were issued within 60 days. The presence of several complex matters during the fiscal year negatively affected the ERT's ability to reach its 85 per cent target.

Process of the ERT

The ERT Members are responsible for conducting pre-hearings, hearings and the issuance of written decisions.

The processing of appeals/applications, which is performed by staff, includes all administrative steps necessary to schedule and resolve an appeal/application from the date of filing to the closing of the file.

When an appeal/application is received, it is dealt with through an administrative process that includes:

- Reviewing the appeal/application to assess its validity
- Acknowledging the appeal/application and requesting further information, if required

- Scheduling the hearing
- Monitoring and managing the case throughout the process
- Posting orders and the final written decision on the website.

Mediation

The use of mediation encourages the parties to discuss the issues in dispute in an attempt to narrow or settle differences. The successful results achieved during mediation often eliminates the need for a hearing or reduces the number of scheduled hearing days.

The Members who conduct ERT mediations have received certified training. Mediation, which is offered in all appeal and application hearings (except in matters under the *NEPDA*, *Oak Ridges Moraine Conservation Act* and the *Greenbelt Act*) is conducted after a preliminary hearing and, generally, 30 days prior to the commencement of the main hearing. However, should the parties choose not to participate at that time, mediation services are available any time throughout the hearing process upon request.

SECTION 5: ONTARIO MUNICIPAL BOARD (OMB)

About the OMB

The Ontario Municipal Board (OMB) is an independent adjudicative tribunal that conducts hearings and makes decisions on matters that have been appealed to the OMB under specific provincial legislation. The majority of appeals arise from applications filed with municipalities under the *Planning Act*, such as official plans, zoning by-laws, subdivision plans, consents and minor variances, or claims for land compensation filed under the *Expropriations Act,* development charges, ward boundaries and aggregate resources.

Purpose of the OMB

Along with other regulatory and adjudicative agencies, the OMB is part of the administrative justice sector in Ontario. Its processes are designed to resolve disputes in an informal, less costly and more timely manner than in the courts. OMB Members make independent decisions based on the applicable law and policies, and the evidence presented at the hearing.

The Ontario government plays an active role in Provincial land use planning, by the enactment of legislation, policy statements or Provincial Plans, authorized under the *Planning Act*. Municipalities develop land use planning instruments and local rules which are to conform with Provincial policy. When a dispute arises, certain appeals can be filed with the OMB under the *Planning Act* and other land related legislation.

History and Jurisdiction

The OMB is one of the province's longest-standing adjudicative tribunals. In 1906, the OMB assumed its initial responsibilities, including those previously carried out by the Office of the Provincial Municipal Auditor. Originally named the Ontario Railway and Municipal Board, it was created to oversee municipalities' accounts and to supervise the rapidly growing rail transportation system between and within municipalities. It was renamed the Ontario Municipal Board in 1932.

Over the years, the role and mandate of the OMB has changed. In a large number and variety of statutes, the OMB continues to be named as the tribunal where applications or appeals can be brought for resolution. The OMB's main areas of work are in the areas of land use planning, development charges, and compensation matters under the *Expropriations Act*.

In 2003, the Province embarked upon a wide range of planning reforms that have had a significant impact on the OMB. These reforms have re-defined the role of the Province and the OMB in land use planning and have increased the role of local municipal decision-making.

The first of these reforms came with the introduction of the *Greenbelt Protection Act* in 2004. This Act designated a Greenbelt study area within the GTA Regions, the City of Toronto, the Oak Ridges Moraine, the Niagara Escarpment Plan and certain lands within Niagara Region. The *Greenbelt Act, 2005* and the Greenbelt Plan followed.

The Strong Communities (Planning Amendment) Act, 2004 and in June 2005 the *Places to Grow Act* were additional reforms that had an impact on the OMB. Appeals of these municipal plan amendments (to bring Official Plans into conformity with the Growth Plan) are conducted under the *Planning Act* and are therefore heard by the OMB, unless otherwise determined by the Minister of Municipal Affairs and Housing and the Minister of Infrastructure.

In October 2006, the Province introduced comprehensive amendments to the *Planning Act*, known as Bill 51.

The OMB's mandate has evolved to that of an appeal board that is required to make decisions that conform to provincial plans and are consistent with provincial policy statements. The OMB only hears certain appeals that are authorized by the *Planning Act.*

Changes to Legislation and Rules

There were no significant legislative changes or changes to the OMB's Rules of Practice and Procedure during the fiscal year.

Caseload

Files Received

File intake remained relatively constant in the 2011-2012 fiscal year. Patterns of intake from a geographic perspective continue to follow patterns found in previous years with the largest number of files, about 30 per cent, involving the City of Toronto.

The Greater Toronto Area accounts for about 46 per cent of the OMB's intake. Ottawa generated nine per cent of the OMB's intake for the year. Each of the other areas of the province accounted for less than six per cent of the OMB's intake during the fiscal year. The requirement in the *Planning Act* for municipalities to bring their official plans into conformity with provincial plans and policy statements led to a large number of appeals to the OMB both from the decisions or lack of decisions from approval authorities. In addition, a number of municipalities updated their major by-laws resulting in many appeals to the OMB. See the table that follows for the types of files received by the OMB.

In 2011-2012 fiscal year, in addition to reporting on the number of files received, the OMB is reporting on the number of appeals received by file type.

OMB File Types Received (Appeals and Applications) 2009-2010 to 2011-2012

File Types Received (Appeals and Applications)	2009-2010	2010-2011	2011-2012 (No. of Files)	2011-2012 (No. of Appeals)
Minor Variances	363	495	581	607
Consents	176	229	305	321
Zoning By-laws	187	197	159	285
Official Plans	169	172	120	382
Zoning Refusal or Inaction	146	160	125	125
Plans of Subdivision	76	98	68	76
Municipal and Miscellaneous (incl. site plans)	68	90	115	117
Development Charges	60	9	18	48
Land Compensation	42	34	31	31
Municipal Finance	11	9	5	5
Joint Board	1	1	0	0
Other	33			
TOTAL	**1,332**	**1,494**	**1,527**	**1,997**

Hearing Activity

The OMB scheduled 2,026 hearing events in 2011-2012, a nine per cent increase in the number of hearings from the previous year. Of the 2,026 hearings scheduled, 1,320 resulted in a hearing before the OMB. The OMB continues to use the pre-hearing process on complex cases to refine or settle issues so that hearings, if still needed, are focused and more efficient.

The OMB has increased its ability to respond to client requests for quick access to adjudication on new cases or timely interventions on ongoing cases where the parties require an adjudicative determination to keep the case on track to resolution.

Mediation

The OMB's mediation program continues to provide enhanced service to OMB clients. Many matters have been settled as the result of OMB mediation. Mediations have been shown to shorten the time for resolution and to be less costly for the parties. Mediation efforts in relation to land compensation cases have had the greatest success. For the 2011-2012 fiscal year, there were 90 mediations held, representing a 73 per cent increase in the number of mediation events held, in comparison to the previous fiscal year.

Performance Results

The scheduling of hearing dates at the OMB depends on many factors including: the correct filing of documents, the number of witnesses expected, the availability of hearing rooms and the readiness of parties to proceed.

- For stand-alone minor variance appeals, 73 per cent of the cases had a first hearing event within 120 days of filing.

- For all other types of applications and appeals, 81 per cent of the cases had a first hearing event within 180 days of filing of the last application that formed part of the case.
- The OMB strives to issue its decisions in a timely manner. In the 2011-2012 fiscal year, 83 per cent of decisions were issued within 60 days of the hearing.

Process of the OMB

Disputes are brought to the OMB by filing an appeal. Depending on the type of dispute, there are different processes and timelines for filing an appeal. The OMB reviews the appeal and decides with input from the parties, to stream the case into mediation, motion, pre-hearing or hearing. Most appeals are resolved by a full hearing.

The OMB holds hearings across the province, most often in the municipality where the property is located. The OMB holds hearing events by teleconference when it is appropriate. Teleconference proceedings are often used for such events as pre-hearings and settlement hearings. The use of teleconferences allows the OMB to respond quickly and is time and cost efficient for the parties. In 2011-2012, teleconferences represented 23 per cent of hearing events.

OMB Members hear the appeal and make independent decisions based on the evidence presented at the hearing, applicable law, the provincial planning policy, municipal planning documents, previous OMB decisions (if applicable) and the principles of good planning.

Case Management

The OMB's case management department supports the adjudication of matters by managing the processing, scheduling and facilities coordination of all appeals/applications received by the OMB from intake through to resolution, with the exception of the adjudication of matters by Members of the Board.

Cases are managed on a geographic basis with a case coordinator(s) assigned to each case. This provides clients with a consistent point of contact with staff. Assigning caseload responsibility along regional lines also allows managers and staff to build regional expertise, monitor local issues and anticipate matters that could be brought to the OMB for adjudication.